

AMENDED IN SENATE JUNE 9, 2010
AMENDED IN SENATE APRIL 6, 2010
AMENDED IN SENATE FEBRUARY 18, 2010
AMENDED IN SENATE JUNE 29, 2009
AMENDED IN SENATE JUNE 15, 2009
AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1443

Introduced by Assembly Member Huffman
(Coauthors: Assembly Members Adams, Jeffries, Portantino,
Saldana, and Smyth)
(Coauthor: Senator Price)

February 27, 2009

An act to add Section 68152.5 to the Government Code, and to amend Sections 23217, 23540, 23546, 23550, 23550.5, 23560, and 23566 of, and to add Section 23595 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1443, as amended, Huffman. Vehicles: driving under the influence: repeat offenders.

~~(1) Existing law authorizes the trial court clerk to destroy court records after notice of destruction and if there is no request and order for transfer of the records, except for specified records, when specified times have expired after the final disposition of the case in the categories listed.~~

~~This bill would require the trial court clerk to adopt procedures to ensure that records of convictions for driving under the influence of alcohol or drugs are retained permanently.~~

~~(2)–~~

(1) Existing law requires, if a person is convicted of a specified driving-under-the-influence (DUI) offense and the offense occurred within 10 years of 2, or 3 or more prior specified DUI offenses that resulted in a conviction, that the person be punished by enhanced penalties, and that the person's privilege to operate a motor vehicle be revoked by the ~~department~~ *Department of Motor Vehicles* for a period of 2, 3, 4, or 5 years, as applicable.

This bill would delete the 10-year limitation.

~~(3) Existing law authorizes the court to impose specified additional orders on a person when the person is convicted of a DUI offense, depending on the circumstances.~~

This bill would authorize the department to permanently revoke the driver's license of a person who was previously convicted of 3 or more specified DUI offenses if the court 5 factors, including, but not limited to, the period of time that has elapsed since his or her previous DUI convictions. The bill would require the court to permanently revoke the driver's license of a person who was previously convicted of 5 or more specified DUI offenses.

The bill would require that a person whose driver's license is permanently revoked by ~~a court~~ *the department* under these provisions forfeit his or her vehicle to the state or forfeit any interest in the vehicle, if specified provisions apply and would prohibit that person from registering or owning a vehicle in this state. The bill would prohibit a person in this state from selling, leasing, or lending a vehicle to that person. ~~The bill would also require the Department of Motor Vehicles to establish a database of persons whose driver's license has been permanently revoked by a court under these provisions~~ *Because a person who violates this prohibition is guilty of a crime, this bill would create a new crime, thereby imposing a state-mandated local program.*

The bill would also authorize a person *who had only 3 convictions of a DUI offense, and whose driver's license was permanently revoked by a court because of 3 or 4 separate DUI offenses* ~~the department to apply to the Department of Motor Vehicles petition to the court for the reinstatement of his or her privilege to drive after~~ *after* a period of ~~3~~ 5 years from the date of his or her last conviction if the person successfully ~~completes~~ *passes* a written test and driving test for the license

classification and *successfully completes* a specified alcohol treatment program. *The bill would require the court to consider 5 specified factors in determinating whether to order the department to reinstate the person's license.*

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as
2 “Melody’s Law.”

3 ~~SEC. 2. Section 68152.5 is added to the Government Code, to~~
4 ~~read:~~

5 ~~68152.5. Notwithstanding Section 68152, the trial court clerk~~
6 ~~shall adopt procedures to ensure that the records of convictions~~
7 ~~for driving under the influence of alcohol or drugs are retained~~
8 ~~permanently, including, but not limited to, convictions pursuant~~
9 ~~to Section 23103, as specified in Section 23103.5, and Sections~~
10 ~~23152 and 23153, of the Vehicle Code, and subdivisions (a) or (b)~~
11 ~~of Section 191.5, paragraph (1) of subdivision (c) of Section 192,~~
12 ~~and subdivision (a) of Section 192.5, of the Penal Code.~~

13 ~~SEC. 3.~~

14 SEC. 2. Section 23217 of the Vehicle Code is amended to read:

15 23217. The Legislature finds and declares that some repeat
16 offenders of the prohibition against driving under the influence of
17 alcohol or drugs, when they are addicted or when they have too
18 much alcohol in their systems, may be escaping the intent of the
19 Legislature to punish the offender with progressively greater
20 severity if the offense is repeated one or more times. This situation
21 may occur when a conviction for a subsequent offense occurs
22 before a conviction is obtained on an earlier offense.

23 The Legislature further finds and declares that the timing of
24 court proceedings should not permit a person to avoid aggravated
25 mandatory minimum penalties for multiple separate offenses. It

1 is the intent of the Legislature to provide that a person be subject
2 to enhanced mandatory minimum penalties for multiple offenses,
3 regardless of when the convictions for those offenses were
4 obtained.

5 Nothing in this section requires consideration of judgment of
6 conviction in a separate proceeding that is entered after the
7 judgment in the present proceeding, except as it relates to violation
8 of probation.

9 Nothing in this section or the amendments to Section 23540,
10 23546, 23550, 23560, 23566, 23622, or 23640 made by Chapter
11 1205 of the Statutes of 1984 affects the penalty for a violation of
12 Section 23152 or 23153 occurring prior to January 1, 1985.

13 ~~SEC. 4.~~

14 *SEC. 3.* Section 23540 of the Vehicle Code is amended to read:

15 23540. (a) If a person is convicted of a violation of Section
16 23152 and the person was previously convicted of a separate
17 violation of Section 23103, as specified in Section 23103.5, 23152,
18 or 23153, that resulted in a conviction, that person shall be
19 punished by imprisonment in the county jail for not less than 90
20 days nor more than one year and by a fine of not less than three
21 hundred ninety dollars (\$390) nor more than one thousand dollars
22 (\$1,000). The person's privilege to operate a motor vehicle shall
23 be suspended by the department pursuant to paragraph (3) of
24 subdivision (a) of Section 13352. The court shall require the person
25 to surrender the driver's license to the court in accordance with
26 Section 13550.

27 (b) Whenever, when considering the circumstances taken as a
28 whole, the court determines that the person punished under this
29 section would present a traffic safety or public safety risk if
30 authorized to operate a motor vehicle during the period of
31 suspension imposed under paragraph (3) of subdivision (a) of
32 Section 13352, the court may disallow the issuance of a restricted
33 driver's license required under Section 13352.5.

34 ~~SEC. 5.~~

35 *SEC. 4.* Section 23546 of the Vehicle Code is amended to read:

36 23546. (a) If a person is convicted of a violation of Section
37 23152 and the person was previously convicted of two separate
38 violations of Section 23103, as specified in Section 23103.5, 23152,
39 or 23153, or any combination thereof, that resulted in convictions,
40 that person shall be punished by imprisonment in the county jail

for not less than 120 days nor more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles as required in paragraph (5) of subdivision (a) of Section 13352. The court shall require the person to surrender his or her driver's license to the court in accordance with Section 13550.

(b) A person convicted of a violation of Section 23152 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

~~SEC. 6.~~

SEC. 5. Section 23550 of the Vehicle Code is amended to read: 23550. (a) If a person is convicted of a violation of Section 23152 and the person was previously convicted of three or more separate violations of Section 23103, as specified in Section 23103.5, ~~or Section 23152~~ 23152, or 23153, or any combination thereof, that resulted in convictions, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (9) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) A person convicted of a violation of Section 23152 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

~~SEC. 7.~~

SEC. 6. Section 23550.5 of the Vehicle Code is amended to read:

23550.5. (a) A person is guilty of a public offense, punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000) if that person is convicted of a violation of Section 23152

1 or 23153, and the person was previously convicted of any of the
2 following:

3 (1) A prior violation of Section 23152 that was punished as a
4 felony under Section 23550 or this section, or both, or under former
5 Section 23175 or former Section 23175.5, or both.

6 (2) A prior violation of Section 23153 that was punished as a
7 felony.

8 (3) A prior violation of paragraph (1) of subdivision (c) of
9 Section 192 of the Penal Code that was punished as a felony.

10 (b) Each person who, having previously been convicted of a
11 violation of subdivision (a) of Section 191.5 of the Penal Code, a
12 felony violation of subdivision (b) of Section 191.5, or a violation
13 of subdivision (a) of Section 192.5 of the Penal Code, is
14 subsequently convicted of a violation of Section 23152 or 23153
15 is guilty of a public offense punishable by imprisonment in the
16 state prison or confinement in a county jail for not more than one
17 year and by a fine of not less than three hundred ninety dollars
18 (\$390) nor more than one thousand dollars (\$1,000).

19 (c) The privilege to operate a motor vehicle of a person
20 convicted of a violation that is punishable under subdivision (a)
21 or (b) shall be revoked by the department under paragraph (9) of
22 subdivision (a) of Section 13352, unless paragraph (8) of
23 subdivision (a) of Section 13352 is also applicable, in which case
24 the privilege shall be revoked under that provision. The court shall
25 require the person to surrender the driver's license to the court in
26 accordance with Section 13550.

27 (d) A person convicted of a violation of Section 23152 or 23153
28 that is punishable under this section shall be designated as a
29 habitual traffic offender for a period of three years, subsequent to
30 the conviction. The person shall be advised of this designation
31 under subdivision (b) of Section 13350.

32 ~~SEC. 8.~~

33 *SEC. 7.* Section 23560 of the Vehicle Code is amended to read:
34 23560. If a person is convicted of a violation of Section 23153
35 and the person was previously convicted of a separate violation
36 of Section 23103, as specified in Section 23103.5, 23152, or 23153
37 that resulted in a conviction, that person shall be punished by
38 imprisonment in the state prison, or in a county jail for not less
39 than 120 days nor more than one year, and by a fine of not less
40 than three hundred ninety dollars (\$390) nor more than five

1 thousand dollars (\$5,000). The person's privilege to operate a
2 motor vehicle shall be revoked by the Department of Motor
3 Vehicles pursuant to paragraph (4) of subdivision (a) of Section
4 13352. The court shall require the person to surrender the driver's
5 license to the court in accordance with Section 13550.

6 ~~SEC. 9.~~

7 *SEC. 8.* Section 23566 of the Vehicle Code is amended to read:

8 23566. (a) If a person is convicted of a violation of Section
9 23153 and the person was previously convicted of two or more
10 separate violations of Section 23103, as specified in Section
11 23103.5, ~~or Section 23152~~ 23152, or 23153, or any combination
12 of these violations, that resulted in convictions, that person shall
13 be punished by imprisonment in the state prison for a term of two,
14 three, or four years and by a fine of not less than one thousand
15 fifteen dollars (\$1,015) nor more than five thousand dollars
16 (\$5,000). The person's privilege to operate a motor vehicle shall
17 be revoked by the Department of Motor Vehicles pursuant to
18 paragraph (8) of subdivision (a) of Section 13352. The court shall
19 require the person to surrender the driver's license to the court in
20 accordance with Section 13550.

21 (b) If a person is convicted of a violation of Section 23153, and
22 the act or neglect proximately causes great bodily injury, as defined
23 in Section 12022.7 of the Penal Code, to any person other than the
24 driver, and the person was previously convicted of two or more
25 separate violations of Section 23103, as specified in Section
26 23103.5, ~~or Section 23152~~ 23152, or 23153, or any combination
27 of these violations, that resulted in convictions, that person shall
28 be punished by imprisonment in the state prison for a term of two,
29 three, or four years and by a fine of not less than one thousand
30 fifteen dollars (\$1,015) nor more than five thousand dollars
31 (\$5,000). The person's privilege to operate a motor vehicle shall
32 be revoked by the Department of Motor Vehicles pursuant to
33 paragraph (8) of subdivision (a) of Section 13352. The court shall
34 require the person to surrender the driver's license to the court in
35 accordance with Section 13550.

36 (c) If a person is convicted under subdivision (b), and the person
37 was previously convicted of four or more separate violations of
38 Section 23103, as specified in Section 23103.5, ~~or Section 23152~~
39 23152, or 23153, or any combination of these violations, that
40 resulted in convictions, that person shall, in addition and

consecutive to the sentences imposed under subdivision (b), be punished by an additional term of imprisonment in the state prison for three years.

The enhancement allegation provided in this subdivision shall be pleaded and proved as provided by law.

(d) A person convicted of Section 23153 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

(e) A person confined in state prison under this section shall be ordered by the court to participate in an alcohol or drug program, or both, that is available at the prison during the person's confinement. Completion of an alcohol or drug program under this section does not meet the program completion requirement of paragraph (8) of subdivision (a) of Section 13352, unless the drug or alcohol program is licensed under Section 11836 of the Health and Safety Code, or is a program specified in Section 8001 of the Penal Code.

~~SEC. 10. Section 23595 is added to the Vehicle Code, to read:~~

~~23595. (a) Notwithstanding Sections 13202.5, 13203, and 13352, a court may order the permanent revocation of the driver's license of a person who was previously convicted of three or more separate violations of Section 23152 or 23153. When making this order, the court shall consider all of the following:~~

~~(1) The degree of bodily injury caused by the person's previous violations that resulted in a conviction.~~

~~(2) The period of time that has elapsed since the person's previous convictions.~~

~~(3) The person's blood-alcohol level at the time of each violation.~~

~~(4) The person's past and future participation in an alcohol treatment program in an effort to rehabilitate himself or herself.~~

~~(5) The person's overall risk to traffic or public safety.~~

~~(b) Notwithstanding Sections 13202.5, 13203, and 13352, a court shall order the permanent revocation of the driver's license of a person who was previously convicted of five or more separate violations of Section 23152 or 23153.~~

~~(c) A person whose driver's license was permanently revoked by a court because of three or four separate violations of Section~~

23152 or 23153, may apply to the department for the reinstatement of his or her privilege to drive after a period of three years from the date of his or her last conviction, if he or she completes all of the following:

(1) ~~Successfully passes the written test for the license classification.~~

(2) ~~Successfully passes the driving test for the license classification.~~

(3) ~~An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) of Section 23568 or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code.~~

(d) ~~A person whose driver's license has been permanently revoked under subdivision (b) of this section shall not be eligible for a restricted driver's license under this code.~~

(e) ~~A person whose driver's license has been permanently revoked by the court under this section shall forfeit his or her vehicle to the state if he or she is the registered owner of the vehicle and holds title to the vehicle.~~

(1) ~~If the person is the coregistrant or cotitle owner of the vehicle, he or she shall forfeit all interest in the vehicle, and the vehicle shall be released to the coregistrant or the cotitle owner, provided that the vehicle is reregistered in the other person's name.~~

(2) ~~If there is no coregistrant or cotitle owner, then the vehicle shall be released to the person or entity that holds legal title pursuant to subdivision (b) of Section 23592.~~

(f) ~~A person whose driver's license is permanently revoked by the court under this section shall be prohibited from registering or owning a vehicle in this state and no person in this state shall sell, lease, or lend a vehicle to any person whose license has been permanently revoked by the court under this section.~~

(g) ~~The Department of Motor Vehicles shall establish a database of persons whose driver's license has been permanently revoked by a court under this section.~~

(h) ~~Upon receipt of a duly certified abstract of the record of the court showing that the court has ordered permanent revocation of~~

1 ~~a driver's license pursuant to this section, the department shall~~
2 ~~permanently revoke the person's driver's license.~~

3 *SEC. 9. Section 23595 is added to the Vehicle Code, to read:*

4 *23595. (a) Notwithstanding Sections 13202.5, 13203, and*
5 *13352, upon receipt of an abstract of the record of a court showing*
6 *a person has been convicted of a violation of Section 23152 or*
7 *23153, if the department determines that it is the person's third*
8 *or more conviction for a violation of Section 23152 or 23153, the*
9 *department shall permanently revoke the person's license.*

10 *(b) Except as provided in subdivision (4), a person whose license*
11 *was permanently revoked by the department pursuant to this*
12 *section may petition the court for the reinstatement of his or her*
13 *driving privilege after a period of five years from the date of his*
14 *or her last conviction if he or she does all of the following:*

15 *(1) Successfully passes the written test for the license*
16 *classification.*

17 *(2) Successfully passes the driving test for the license*
18 *classification.*

19 *(3) Successfully completes an 18-month*
20 *driving-under-the-influence program licensed pursuant to Section*
21 *11836 of the Health and Safety Code, as described in subdivision*
22 *(b) of Section 23568 or, if available in the county of the person's*
23 *residence or employment, a 30-month driving-under-the-influence*
24 *program licensed pursuant to Section 11836 of the Health and*
25 *Safety Code, or a program specified in Section 8001 of the Penal*
26 *Code.*

27 *(c) When determining whether to order the department to*
28 *reinstate the person's license, the court shall consider all of the*
29 *following:*

30 *(1) The degree of bodily injury caused by the person's previous*
31 *violations that resulted in a conviction.*

32 *(2) The period of time that has elapsed since the person's*
33 *previous convictions.*

34 *(3) The person's blood-alcohol level at the time of each*
35 *violation.*

36 *(4) The person's past and future participation in an alcohol*
37 *treatment program in an effort to rehabilitate himself or herself.*

38 *(5) The person's overall risk to traffic or public safety.*

39 *(d) Upon receipt of a duly certified abstract of the record of the*
40 *court showing that the court has ordered reinstatement of a driver's*

1 *license pursuant to this section, the department shall reinstate the*
2 *person's driver's license.*

3 *(e) A person whose driver's license has been permanently*
4 *revoked pursuant to this section shall not be eligible for a restricted*
5 *driver's license under this code.*

6 *(f) A person with four or more convictions of a violation of*
7 *Section 23152 or 23153 shall not be eligible to petition the court*
8 *for the reinstatement of his or her driving privileges pursuant to*
9 *subdivision (b).*

10 *(g) A person whose driver's license has been permanently*
11 *revoked by the department under this section shall forfeit his or*
12 *her vehicle to the state if he or she is the registered owner of the*
13 *vehicle and holds title to the vehicle.*

14 *(h) If the person is the coregistrant or cotitle owner of the*
15 *vehicle, he or she shall forfeit all of his or her interest in the*
16 *vehicle, and the vehicle shall be released to the coregistrant or*
17 *the cotitle owner, if the vehicle is reregistered in the other person's*
18 *name.*

19 *(i) If there is no coregistrant or cotitle owner, then the vehicle*
20 *shall be released to the person or entity that holds legal title*
21 *pursuant to subdivision (b) of Section 23592.*

22 *(j) A person whose driver's license is permanently revoked by*
23 *the department under this section shall be prohibited from*
24 *registering or owning a vehicle in this state.*

25 *(k) A person in this state shall not sell, lease, or lend a vehicle*
26 *to a person whose license has been permanently revoked under*
27 *this section.*

28 *SEC. 10. No reimbursement is required by this act pursuant*
29 *to Section 6 of Article XIII B of the California Constitution because*
30 *the only costs that may be incurred by a local agency or school*
31 *district will be incurred because this act creates a new crime or*
32 *infraction, eliminates a crime or infraction, or changes the penalty*
33 *for a crime or infraction, within the meaning of Section 17556 of*
34 *the Government Code, or changes the definition of a crime within*
35 *the meaning of Section 6 of Article XIII B of the California*
36 *Constitution.*